

1 UNITED STATES DISTRICT COURT  
2 CENTRAL DISTRICT OF CALIFORNIA - WESTERN DIVISION  
3 HONORABLE STANLEY BLUMENFELD, JR., U.S. DISTRICT JUDGE  
4

5 SANTA CLARITA VALLEY WATER AGENCY, )  
6 PLAINTIFF, ) CASE NO.  
7 vs. ) CV 18-06825-SB  
8 WHITTAKER CORPORATION, et al., ) VOLUME 17  
9 DEFENDANTS. ) PAGES 1908 TO 1963  
10 \_\_\_\_\_ )  
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13 REPORTER'S TRANSCRIPT OF  
14 TRIAL DAY 9  
15 WEDNESDAY, DECEMBER 1, 2021  
16 1:06 P.M.  
17 LOS ANGELES, CALIFORNIA  
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**ALSO PRESENT:**

Matt Stone  
Scott Fryer  
Ron Beaton  
Eric Lardiere

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(None)

1 WEDNESDAY, DECEMBER 1, 2021; 1:06 P.M.

2 LOS ANGELES, CALIFORNIA

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5 (The following proceedings were held in  
6 open court in the presence of the jury:)

7 THE COURT: We are on the record in the trial  
8 matter with all present who were present previously,  
9 specifically all counsel. Mr. Lardiere is here as well. And  
01:06PM 10 we have the jury present.

11 We remain in the defense case. And my  
12 understanding at this point, members of the jury, is that  
13 Whittaker is going to be presenting evidence by way of  
14 deposition testimony. You may recall that you heard the  
01:06PM 15 deposition testimony of a gentleman by the name of  
16 John Peloquin who appeared before you by way of video. We will  
17 see in a moment, but my understanding is that the deponents, as  
18 they're called, who are witnesses, who you should treat no  
19 differently than if they appeared in court and testified here,  
01:07PM 20 will appear in two different forms. One will be -- I think  
21 there is at least one who will be by video, but there are  
22 others who will appear just by their transcript itself.

23 So what you're going to hear, essentially, is a  
24 little bit of role playing where you will have a lawyer who is  
01:07PM 25 going to be asking the questions that were asked at the

1 deposition, and then the role play is there will be a  
2 witness -- a lawyer, not the real witness -- who is simply  
3 going to read the lines of the witness who actually testified.

01:07PM 4 And what you should pay attention to is the  
5 substance. You should focus on the questions and the answers,  
6 not on how someone is presenting the questions or how someone  
7 is reading the answers. Just listen as best you can to the  
8 substance of what you will be hearing.

01:08PM 9 So with that, who is the first or the next  
10 witness, I should say?

11 MR. BLUM: Mr. Zoyd Luce.

12 THE COURT: Okay. And Mr. Luce is appearing by  
13 video or non-video?

01:08PM 14 MR. BLUM: The next three will all be via  
15 deposition and only Mr. -- Mr. Luce, Jisa, and Simmons will be  
16 via deposition, and Ms. Durant will be via videotape.

17 THE COURT: All right. So your next witness is  
18 Zoyd Luce.

01:08PM 19 MR. BLUM: Right. And playing Zoyd Luce will be  
20 Mr. Fryer.

21 THE COURT: All right. So, Mr. Fryer, if you  
22 would please take the witness stand.

23 Mr. Luce testified on what day?

24 MR. TROWBRIDGE: March 28, 2002.

01:09PM 25 THE COURT: All right. One moment, please. Let

1 me make sure I have the deposition. I think I do.

2 So he was deposed on March 28 of 2002, you said?

3 MR. TROWBRIDGE: Correct.

4 THE COURT: All right. Well, with that, you may

01:09PM 5 proceed with the question and answer.

6 **ZOYD LUCE,**

7 **CALLED BY THE DEFENDANT VIA DEPOSITION TRANSCRIPT.**

8 **EXAMINATION**

9 BY MR. TROWBRIDGE:

01:09PM 10 Q Would you state your full name and spell it,  
11 please, for the record?

12 A Okay. Zoyd, Z-o-y-d. Middle name, R. Middle  
13 name Reed, R-e-e-d. Last name is Luce, L-u-c-e.

14 Q And where do you reside, Mr. Luce?

01:09PM 15 A 2441 Creekside Court, Hayward, California 94542.

16 Q Mr. Luce, did you ever work for  
17 Whittaker Corporation?

18 A Yes.

19 Q When?

01:10PM 20 A 1979 through 1985.

21 Q What position or positions did you hold with  
22 Whittaker during that time?

23 A I was manager of safety and security, director of  
24 human resources, and vice president of human resources.

01:10PM 25 Q When were you manager of safety and security?

1           A           Let's see. February of 1979, and, frankly, I  
2           don't remember the date I was promoted.

3           Q           Do you know about how long you served as manager  
4           of -- of safety and security?

01:10PM 5           A           Two years, about.

6           Q           So approximately in 1981 or thereabouts you  
7           became director of human resources; is that correct?

8           A           To the best of my recollection.

9           Q           And how long were you director of human  
01:10PM 10          resources?

11          A           About a year and a half, and then I was promoted  
12          to vice president.

13          Q           So that would take us to '82, '83, something like  
14          that?

01:11PM 15          A           Approximately.

16          Q           And why did you leave the employ of Whittaker?

17          A           I had an opportunity with McDonnell Douglas  
18          Helicopters.

19          Q           What were your duties for the Whittaker-Bermite  
01:11PM 20          division when you commenced work as manager of safety and  
21          security?

22          A           I was in charge of the safety program.

23          Q           And what did that entail?

24          A           It entailed, one, compliance with the resource --  
01:11PM 25          excuse me. Let me erase that -- with the Occupation Health and



1 Safety Administration; secondly, the Department of Defense  
2 Safety Manual and Regulations for working with explosives; and,  
3 generally, the good principles of accident prevention.

01:11PM 4 Q Did you as part of your duties at the  
5 Whittaker-Bermite division design any programs for waste  
6 disposal?

7 A I issued a manual that was in -- I issued a  
8 manual that was for compliance, Resource Conservation and  
9 Recovery Act.

01:12PM 10 Q And when was that about?

11 A I don't remember the exact date. I think RCRA  
12 came into law in 1980 approximately.

13 Q Prior to that time, was there any such manual for  
14 handling of waste on the site?

01:12PM 15 A We followed the guidelines of the DOD, Department  
16 of Defense.

17 Q Were there any documents that you issued or you  
18 are aware that the company issued relative to waste handling  
19 practices prior to the time that you prepared this manual for  
01:12PM 20 compliance with RCRA?

21 A We had regulations at each manufacturing site to  
22 protect the employees. I don't remember specifically because I  
23 had some engineers that would put those down basically as a  
24 requirement of DOD.

01:12PM 25 Q But apart from any DOD regulation, did

1 Whittaker-Bermite have specific waste-handling policies prior  
2 to the preparation of this manual that you say you prepared to  
3 comply with RCRA?

01:13PM 4 A The DOD issues guidelines on manufacturing  
5 component explosives and guidelines on how to dispose of them.  
6 In our view, our crew followed these guidelines. In other  
7 words, they incorporated them into their -- into our  
8 operations.

01:13PM 9 Q How did you make the crew aware of these  
10 guidelines?

11 A They were there before I got there, and they were  
12 handling that area of expertise.

01:13PM 13 Q When you got there, did you look for any written  
14 policy that had been issued by Whittaker-Bermite to deal with  
15 waste disposal on the site?

16 A We prepared documents, as I indicated to you  
17 earlier, that were put in the manufacturing facility. That's  
18 required when you come under contract with the Department of  
19 Defense.

01:13PM 20 Q So you or your staff prepared such documents  
21 prior to this RCRA compliance manual that you prepared.

22 Is that your testimony?

23 A Yes.

01:14PM 24 Q Well, what waste disposal practices were in place  
25 prior to your issuance of this manual that was prepared for

1 RCRA compliance?

2 A I believe I just stated that we complied with the  
3 Department of Defense guidelines, and those were incorporated  
4 into the procedures that our crew were to follow.

01:14PM

5 Q What waste disposal actually took place onsite  
6 prior to the issuance of this manual?

7 A The disposal crew would pick up waste materials  
8 and dispose of them.

01:14PM

9 Q What waste materials were handled in this  
10 fashion?

11 A It could be any number of manufacturing  
12 processes.

13 Q What were the wastes as examples?

01:14PM

14 A Phosphorous stabilizer, the Rocket Motor  
15 Manufacturing line, and possibly rejects from the manufacture  
16 of shells or squibs, igniters.

17 Q What was done with these wastes onsite?

18 A They were collected and stored according to DOD  
19 regulations and then disposed of.

01:14PM

20 Q Where were they disposed of?

21 A The majority were taken to Fort Irwin,  
22 California.

23 Q What about the rest?

24 A They were disposed of there.

01:15PM

25 Q Onsite?

1 A Onsite.

2 Q How?

3 A Burned.

4 Q Any other disposal practices or -- any other

01:15PM 5 disposal practice onsite?

6 A Not off the top of my head, no.

7 Q Were any of these wastes buried?

8 A No.

9 Q Well, the next sentence says, "Originally one

01:15PM 10 surface impoundment at each of the 317 and 342 areas was

11 utilized for storage and evaporative concentration." Were

12 surface impoundments used for this purpose?

13 A I believe so.

14 Q Were those ponds lined?

01:15PM 15 A Yes, they were.

16 Q With what?

17 A We had a layer -- I forget what the material was.

18 And we had an alarm system. I think that was the regulation

19 requirement at the time.

01:15PM 20 Q What was the alarm system?

21 A If there was a leak, we would be -- it would  
22 alert us.

23 Q Would a bell go off, or what would happen?

24 A No. I'm not sure. As I recollect, it would

01:16PM 25 have -- like a light system that was checked daily.

1 Q Did the lighters for the 317 and 342 surface  
2 impoundments leak?

3 A I don't believe so.

4 Q Did anyone ever tell you that they leaked?

01:16PM 5 A Not that I recall, no.

6 Q Did anyone ever tell you that the hog-out  
7 operations or washout operations of propellant in the  
8 Sidewinder rocket chambers took place prior to the handling of  
9 the 317 surface impoundment?

01:16PM 10 A We put the liner in as a response to RCRA.

11 Q So before RCRA, I take it the surface impoundment  
12 was constructed without a liner?

13 A I recollect it that way.

14 Q The question relates to policies. Were there any  
01:16PM 15 policies promulgated by you, your staff, or other management at  
16 Whittaker, to your knowledge, that would have specifically  
17 instructed employees not to dump waste propellant, oxidizer,  
18 ash, and other debris into ravines on the Whittaker site?

19 A DOD regulations wouldn't allow you to do that.  
01:17PM 20 We had DOD people on the facility.

21 Q Did you make any efforts to apprise all of your  
22 employees of the -- of these regulations as to the disposal of  
23 waste products?

24 A We had a training program in place, and new  
01:17PM 25 employees were indoctrinated when they came in that they had to

1 comply with DOD standard safety regulations.

2 Q Was there any training given to your employees as  
3 to the disposal of hazardous wastes?

4 A We did training, and those records are in place.

01:17PM

5 Q Do you recall any specific training methodology  
6 or procedure that was utilized to ensure that Whittaker  
7 employees did not place waste propellant, oxidizer, ash, and  
8 other debris in ravines on the site?

01:18PM

9 A Again, from a safety vantage point, it wouldn't  
10 have been allowed, and I don't know who would have done that  
11 because DOD does not -- doesn't allow you to just throw  
12 material on the ground.

01:18PM

13 Q Do you recall that there was any waste-handling  
14 procedures in place when you joined the company that would have  
15 prevented indiscriminate dumping of waste to the environment at  
16 the areas itemized by Mr. Peloquin in his memo to you?

17 A Well, as I indicated all along, we followed DOD  
18 guidelines, and we did not allow people -- it wasn't part of  
19 our policy to just dump things. It wouldn't have been safe.

01:18PM

20 Q While you were employed by Whittaker, was there  
21 ever any groundwater monitoring on the site?

22 A No. We never had wells or things like that.

01:18PM

23 Q Did Whittaker engage in any cost benefit analysis  
24 to determine whether it was worth spending \$120,000 for the  
25 benefits that would be derived from a groundwater monitoring

1 system?

2 A I don't recollect.

3 MR. TROWBRIDGE: Thank you, Mr. Luce.

4 MR. BLUM: The next one would be Mr. --

01:19PM

5 MR. TROWBRIDGE: Archie L. Simmons.

6 THE COURT: Okay. So, ladies and gentlemen, that

7 concludes the testimony from Zoyd Luce. And now the next

8 witness that Whittaker is calling is Archie Simmons who also

9 will be testifying in a similar fashion through the reading of

01:19PM

10 his deposition testimony.

11 You may proceed when you're ready.

12 MR. TROWBRIDGE: Mr. Simmons was deposed on

13 March 11, 2002.

14 **ARCHIE L. SIMMONS,**

01:19PM

15 **CALLED BY THE DEFENDANT VIA DEPOSITION TRANSCRIPT.**

16 **EXAMINATION**

17 BY MR. TROWBRIDGE:

18 Q Mr. Simmons, I guess I have seen a couple  
19 documents that said that you are going to either be called

01:19PM

20 Al Simmons or Archie Simmons.

21 A Al is all right.

22 Q So we will call you Al.

23 A All right.

24 Q And I guess a lot of documents show that you are

01:20PM

25 referred to as Al Simmons as opposed to Archie Simmons.

1 Can you state your name and spell your name for  
2 the record?

3 A Archie Leon Simmons, A-r-c-h-i-e L-e-o-n  
4 S-i-m-m-o-n-s.

01:20PM 5 Q Did you ever work for Whittaker Corporation?

6 A Yes.

7 Q I will refer to the Whittaker Corporation as  
8 Whittaker. Is that okay with you?

9 A Yeah. Sure.

01:20PM 10 Q When did you work for Whittaker?

11 A From '72, I believe May, to '86, April, I believe  
12 in '86.

13 Q And what was your position or positions at  
14 Whittaker?

01:20PM 15 A When I first started, I was director of safety in  
16 the southwest metals group stationed in Houston, headquartered  
17 in Houston. Shortly thereafter, they gave me the  
18 responsibility for the whole corporation.

19 Q And when was that?

01:21PM 20 A When?

21 Q Yes.

22 A About six months after I went to work for them.

23 Q Now, after you took over as the director of  
24 safety for the Whittaker Corporation, is that the position you  
01:21PM 25 held all the way through 1986?



1           A           No. When RCRA came on stream in November of  
2 1980, I was appointed director of safety, health, and  
3 environmental compliance.

4           Q           And after November 1980, did you keep that  
01:21PM 5 position until you left Whittaker, or were there other  
6 positions that you had?

7           A           No. I kept that.

8           Q           So when RCRA was approved, then you took on the  
9 responsibility of waste disposal; is that correct?

01:21PM 10           A           Of course RCRA was in its infancy, and nobody  
11 knew what it was going to be at that time. It took them two  
12 years to get their act together, and then that included -- it  
13 was all-inclusive. Everything came under RCRA. But they were  
14 two years starting enforcement, really the government getting  
01:22PM 15 the feet on the ground.

16           Q           And what was your role with the facility located  
17 at 22116 Soledad Canyon Road in the city of West Soledad Canyon  
18 Road -- excuse me -- in the city of Santa Clarita.

19           A           Corporate oversight of safety, health, and  
01:22PM 20 environmental.

21           Q           And what does corporate oversight include?

22           A           Well, each facility had its own individual people  
23 that handled each of these areas, and the corporate statute --  
24 statute was an umbrella for all of it. And we could override  
01:22PM 25 or advise and/or override all of the decisions made at the

1 division level. Since the corporation owned the division, I  
2 presume that would be the way to state it.

3 Q I think that is clear.

4 A I reported to the executive vice president of  
01:22PM 5 finance. He was the No. 3 man in the corporation.

6 Q What percentage of your time did you spend at the  
7 site located at 22116 West Soledad Canyon Road?

8 A I would say my working days would probably be  
9 10 percent or less of my time.

01:23PM 10 Q 10 percent at one facility seems like quite a bit  
11 of -- quite a bit for a company that had 100 divisions. Can  
12 you explain why you spent 10 percent of your time at the site?

13 A I'm not saying I spent 10 percent of my working  
14 time there, but that includes telephone calls and  
01:23PM 15 correspondence and things that probably amounted to 10 percent.  
16 But included in the environmental affairs was safety, and I  
17 don't know how in the world I'd ever separate safety and  
18 environmental because it was all together. And any time they  
19 had serious accidents or things like that in any division, that  
01:23PM 20 would command my time.

21 Q Well, during your tenure -- tenure at Whittaker,  
22 were your offices ever at the site?

23 A No.

24 Q So you always commuted from Houston to --

01:23PM 25 A Dallas. Not Houston.

1 Q To the site.

2 And how often would you visit the site?

3 A Oh, on an irregular basis, very irregular. There  
4 was no schedule.

01:24PM 5 Q Would you estimate that -- I'm just trying to get  
6 an estimate. Maybe like three times a year? Five times a  
7 year? Ten times a year?

8 A I'd say maybe half a dozen times a year.

9 Q And who did you interface most frequently with at  
01:24PM 10 the site?

11 A Whoever was in charge of safety, health, and  
12 environmental affairs.

13 Q Do you know if Glen was in charge of  
14 environmental activities -- strike that.

01:24PM 15 Was Glen in charge of maintaining any of the  
16 waste storage or disposal units at the Bermite site?

17 A We installed a Cadox machine, one of the first  
18 ever built.

19 Q I'm sorry. Is that Cadox?

01:24PM 20 A C-a-d-o-x. It was invented down here in  
21 San Diego. We bought one of the first ones, if not the first  
22 one, and Glen was in charge of maintaining and operating that.  
23 It came under his --

24 Q And what type of unit was that Cadox?

01:25PM 25 A Well, it burned solvents, chlorinated and

1 non-chlorinated solvents, out of the air and water, destroys  
2 it.

3 Q Do you know if that was a RCRA permitted unit?

01:25PM 4 A It was permitted, yes. It was originally  
5 permitted, as I believe, experimental, but because it was the  
6 original, it was built by King, Buck Associates.

7 Q So other than *Forbes*, did RCRA impact your  
8 hazardous waste operation at the site?

01:25PM 9 A Impact it? I don't recall that it impacted it  
10 other than just more paperwork, additional paperwork.

11 Q Other than submitting paperwork, did Whittaker at  
12 the site have to change any of its operations?

13 A I can't recall.

01:25PM 14 Q When you joined Whittaker in, I believe you said  
15 1972 --

16 A Yes. That's when it was.

17 Q -- did anyone brief you on environmental  
18 practices?

01:25PM 19 A No. Hell, we couldn't even spell the word  
20 environmental in 1972 hardly. Nobody -- RCRA brought all of  
21 the attention to the environment other than common sense, you  
22 know.

01:26PM 23 Q Now, did Whittaker have any practices in place  
24 when you joined the company in 1972 regarding environmental  
25 safety, meaning protection of the soil, groundwater or other

1 elements of the environment?

2 A If they did, I wasn't aware of it. That wasn't  
3 my main focus.

01:26PM

4 Q On November 20th, 1980, did anyone brief you on  
5 the practices of the Whittaker-Bermite facility to protect the  
6 environment?

7 A Not to my recollection.

8 Q Do you know if Whittaker had any practices at the  
9 time to protect the environment?

01:26PM

10 A Well, out there safe practices, which you were  
11 compelled to follow automatically, took care of environmental  
12 practices. You don't just throw stuff that they made out there  
13 on the ground and walk around on it. They would either blow  
14 you up or burn you up if you handle it improperly.

01:26PM

15 Q Did you -- when you took over the environmental  
16 responsibilities in 1980, did Whittaker have environmental  
17 protection procedures in place?

18 A Not under the name of environmental, per se. It  
19 all came under safety of handling that kind of stuff, and then  
01:27PM 20 that creates an environmental safe environment. You know, what  
21 I am -- is that clear? That's the best way I know how to say  
22 it. If you mishandle the stuff, it would blow you up, some of  
23 it would. Or it was poison, so you had to handle it carefully  
24 for your own self-protection.

01:27PM

25 Q Now, I understand that -- Mr. Simmons, I

1 understand that there are a lot of concerns regarding the  
2 handling of hazardous materials. What I am getting at, though,  
3 did you have any procedures in place for the safe  
4 environmental -- for the safe -- environmentally safe disposal  
01:27PM 5 of waste at the Whittaker-Bermite site back when you took the  
6 environmental duties over in November of 1980?

7 A I'm not sure I understand the question.

8 Q Let me rephrase the question.

9 When you took over the environmental

01:27PM 10 responsibilities in November of 1980, were there procedures in  
11 place to ensure that waste disposed by Whittaker would not harm  
12 the environment?

13 A Yes. There was always rules and regulations for  
14 handling that stuff. Had to be.

01:28PM 15 Q Did Whittaker have procedures regarding the  
16 disposal of that waste?

17 A Yes. Depending on what it was. It was all  
18 different kinds of procedures. I believe they used Fort Irwin  
19 to dispose of the explosive waste. That was a government  
01:28PM 20 facility that accepted it. And then we had just bulk waste  
21 like household type waste, boxes, cartons, crates, all that  
22 kind of stuff. It was handled.

23 Q As the corporate director of Whittaker's  
24 environmental health and safety -- or it could be safety,  
01:28PM 25 health, and environment -- were you in charge of ensuring that

1 the different divisions were in compliance with RCRA?

2 A Yes. As I could get around to them, yes.

3 Q Let's go back to the Bean letter which was  
4 entered as Exhibit 13. The report indicates that each of --

01:29PM

5 Let's go back to the Bean letter which was  
6 entered as Exhibit 13. The report indicates that each of the  
7 subset liner breaks. Do you recall what the liners were made  
8 out of, Mr. Simmons?

9 A No.

01:29PM

10 Q Do you recall whether these liners met the  
11 standards of the 1980 Resource Conservation Recovery Act?

12 A No. I don't know.

13 Q As the corporate director of environmental health  
14 and safety, did you develop a policy regarding preventative  
15 maintenance for sub liners?

01:29PM

16 A I wouldn't think so. I can't recall it. I sure  
17 wouldn't think so. If we had those liners, they would be the  
18 only one in the whole Whittaker Corporation. It wouldn't be a  
19 significant thing to me.

01:29PM

20 MR. TROWBRIDGE: Thank you, Mr. Simmons.

21 THE COURT: And that concludes his deposition  
22 testimony that you're reading?

23 MR. TROWBRIDGE: Yes.

24 THE COURT: All right. And who is your next  
25 witness?

01:29PM

1 MR. TROWBRIDGE: The next witness is  
2 James Patrick Jisa, Your Honor.

3 THE COURT: All right. And his deposition was  
4 taken on April 9 of 2002?

01:30PM 5 MR. TROWBRIDGE: That's correct, Your Honor.

6 THE COURT: All right. So this is now their next  
7 witness, members of the jury. And, once again, the name is  
8 James Patrick Jisa, J-i-s-a.

9 You may proceed with the reading.

01:29PM 10 **JAMES PATRICK JISA,**  
11 **CALLED BY THE DEFENDANT VIA DEPOSITION TRANSCRIPT.**

12 **EXAMINATION**

13 BY MR. TROWBRIDGE:

14 Q Would you state your name for the record, please?

01:30PM 15 A James Patrick Jisa.

16 Q Do you recall the Bermite site becoming subject  
17 to the Resource Conservation Recovery Act and the regulations  
18 promulgated thereunder?

19 A Yes.

01:30PM 20 Q Were these SOPs developed in response to those  
21 regulations?

22 A Prior to the '80s, the inspection manual that was  
23 used for the facility was DOD 41 something, something,  
24 something, whatever. And that was, quote/unquote, "our bible."

01:30PM 25 Up until -- and I don't recall any dates or



1 times. We didn't pay a whole lot of attention even to OSHA  
2 because we had our own inspection, not internally, but  
3 government inspection. And it was expressly mentioned -- and  
4 it expressly mentioned the fact that DOD contractors were  
01:31PM 5 exempt from state or OSHA.

6 OSHA at that time didn't even exist. It was a  
7 Division of Industrial Safety or something like that. They  
8 didn't know the difference between black powder and soap or --  
9 so when they did come out, they didn't have anything germane to  
01:31PM 10 say.

11 Let's see, that was Virgil Bird and Perry George,  
12 and then I believe during Perry George's tenure we came into  
13 line with OSHA. And then when Zoyd came on, Zoyd Luce -- I'm  
14 trying to think of the gentleman's name -- one of the V.P.s at  
01:31PM 15 Bermite brought over a copy of the --

16 Q So I take it a number of operating procedures and  
17 waste-handling practices were developed in response to RCRA and  
18 the regulations promulgated thereunder?

19 A They were constantly being rewritten and updated  
01:32PM 20 prior to any regulation. If we thought a better way to do  
21 it -- if we found a better way to do it, we always wrote it up  
22 and updated our documents.

23 Q When you utilized the burn pits, were these pits  
24 lined in any way, or were they just open ground?

01:32PM 25 A The intense heat that was generated from disposal

1 of energetic material at that time -- and I would suppose even  
2 now -- nothing would stand up to it. We would put barrels just  
3 for the heck of it close to the burn pit material, and they  
4 weren't there when you came back. It would incinerate them,  
01:32PM 5 vaporize them.

6 Q So the backhoe would just lift it up out of the  
7 flatbed and then put it into the burn pit basically?

8 A Sometimes it would be a large chunk, and they  
9 would use the backhoe to lift it out. Sometimes it would be in  
01:33PM 10 a -- I don't know what the heck you would call it. But like a  
11 basket, and it would -- you would lift it out, and it would  
12 burn the basket too as it was made out of wood.

13 Sometimes when I would get there, it would just  
14 be a glob. I mean, I don't know else to say it. You know, it  
01:33PM 15 was just a huge glob on the ground, and it looked like  
16 innocuous material to the untrained eye.

17 Q And in the early days, those procedures would  
18 have been set forward in the DOD manual that you referenced?

19 A Or in Bermite safety manual. I shouldn't say  
01:33PM 20 safety. Bermite had a manual in the early days for disposal.

21 Q Were you charged with the responsibility of  
22 filling out waste manifests for the site?

23 A Yes.

24 Q Did you have to do any analysis to confirm the  
01:33PM 25 components of the waste for purposes of the manifest?

1 A As I recall, analysis was done.

2 Q Do you recall signing any waste manifests on  
3 behalf of Whittaker-Bermite facility?

4 A Yes.

01:34PM 5 Q And it was one of your job functions to do that;  
6 is that correct?

7 A Correct.

8 Q At any time do you recall there being procedures  
9 or policies in place that would have prevented the simple  
01:34PM 10 disposal of propellant waste or oxidizers in ravines?

11 A Propellant waste, yes.

12 Q What do you recall about policies in that regard?

13 A Well, I can't give you an exact timeframe. We  
14 were burning it up until the time we couldn't burn it, and I  
01:34PM 15 don't recall the date when that took place. And there was a  
16 timeframe where we were taking it off plant and we were burning  
17 it at various Army or Navy or a DOD-controlled facility.  
18 That's about all I can tell you there.

19 Q Were there any policies in place as of the time  
01:34PM 20 that you left the employ of Whittaker that would have prevented  
21 simply disposing of drums and canyons?

22 A There was a policy of termination if anybody was  
23 caught, quote/unquote, "illegally dumping."

24 Q So if this occurred, that would have been in  
01:35PM 25 violation of that policy?

1 A That's correct.

2 Q Okay. Next you reference an old dynamite  
3 building. What was the old dynamite building?

01:35PM

4 A That I do remember. The old dynamite building  
5 dates back to Jim Colbert's days. He owned the property. You  
6 would have to check when, but I mean, you're really going back  
7 now. This goes back to the old gold miner days.

01:35PM

8 It had been used for nitroglycerin manufacture.  
9 I had found a wheel that was used for the processing of  
10 nitroglycerin. In fact, I wanted to take it home, but we were  
11 too afraid that it might be contaminated and burned it. So my  
12 concern was that the old pipes and everything in there might  
13 still have contamination.

01:35PM

14 Q You also mentioned in your resume, which is  
15 Exhibit 201, the second page about the fourth to the last line,  
16 "Train personnel on RCRA, DOD, and OSHA regulations including  
17 California environmental regulations."

18 A Uh-huh.

01:36PM

19 Q Do you recall, were these specific training  
20 courses in a classroom with written materials?

01:36PM

21 A We had a company. I cannot remember the name. I  
22 used to have a much more detailed resume, and I cut it down,  
23 and I can't remember the name of this company. But it's a  
24 well-known environmental company. We had them come in, and  
25 they trained -- they trained the initial team. They provided

1 us with documentation. They had an instructor there, and they  
2 gave us, I believe, a tape that we would use and written  
3 documents that we would use in training.

4 Q Did you ever personally train anyone on RCRA?

01:36PM

5 A We had -- oh, heck. What do I want to call this?  
6 Almost like a seminar with the entire department, and we would  
7 do this, oh, I don't know, let's see, maybe -- I don't know how  
8 many times, but we would bring in all the supervision and  
9 managers and have, as I said, like a seminar. And each one of  
10 us would do a portion of it. And it was something we all  
11 dreaded because it was a real drag, and they had to sign for  
12 it, managers and supervision. And then they were given a copy  
13 of the -- I guess you would call it the Bermite safety manual.  
14 So, yes, to answer your question.

01:37PM

15 Q Prior to when you first found out about RCRA, did  
16 you have any kind of seminars on these type of areas?

17 A Not seminars, no.

18 Q Any type of training?

01:37PM

19 A Yes. Every employee was given documentation and  
20 given -- what the heck did we used to call them? -- new hire  
21 orientation, and a member of the safety department, usually me,  
22 ended up giving one every time we had new employees. And that  
23 contained my entire tenure -- and that continued my entire  
24 tenure while I was there. We had documentation, and then they  
25 were referred to their supervisor as a new employee and

01:37PM

1 follow-up documentation. And then we would go back later and  
2 see how much of it they retained, and they were retested on  
3 it -- not exactly retested, but we would pull them off the line  
4 and ask them what they knew about the facility and their job.

01:38PM 5 Q Were you ever reprimanded during your tenure at  
6 Bermite for not doing your job properly?

7 A I was reprimanded for the explosion, one of the  
8 explosions in the pit for not training the gentlemen that was  
9 working with me properly.

01:38PM 10 Q Any others?

11 A For not having written inspections on a location  
12 that I was not responsible for.

13 Q Do you recall any barrels that you ever saw that  
14 were actually leaking waste?

01:38PM 15 A Meaning flowing?

16 Q Any kind of leak. Not just flowing.

17 A There was barrels that had deteriorated in the  
18 propellant area where we at one time stored waste of all kinds,  
19 and they showed signs of rust.

01:38PM 20 Q Do you recall seeing material leak out of those  
21 barrels?

22 A No.

23 MR. TROWBRIDGE: Thank you.

24 THE COURT: And that concludes the reading of the  
01:39PM 25 testimony of James Jisa.

1 And so who is your next witness?

2 MR. BLUM: It would be Meredith Durant via video,  
3 Your Honor.

4 THE COURT: All right. And just as the parties  
01:39PM 5 have been doing, this is going to be played through from  
6 beginning to end without separation to designate which lawyer  
7 for which party was doing the questioning.

8 Is that correct, Mr. Blum?

9 MR. BLUM: Yes, sir.

01:39PM 10 THE COURT: Just to make sure you understand what  
11 I have just asked, members of the jury -- perhaps it's  
12 obvious -- but for ease of reading, this is all being read  
13 together. As you saw in this instance, it was by one lawyer  
14 and a witness even though there was questioning on both sides.  
01:39PM 15 So you're just hearing the testimony. You're not seeing which  
16 side is actually going to be asking the questions or at least  
17 you didn't for the deposition. That may be different with  
18 regard to the video where you will be seeing the lawyer who is  
19 asking the questions.

01:40PM 20 So with that, first, please identify the date or  
21 dates of the deposition.

22 MR. BLUM: Your Honor, there's two depositions.  
23 The first will be November 11, 2019, and the second will be  
24 August 4, 2020.

01:40PM 25 THE COURT: And so call your next witness then.

1 MR. BLUM: Meredith Durant.

2 THE COURT: Let's go ahead. As soon as you're  
3 ready, you can display the videotaped deposition testimony.

4 **MEREDITH DURANT,**

01:40PM

5 **CALLED BY THE DEFENDANT VIA DEPOSITION VIDEO.**

6 **EXAMINATION**

7 (The video commenced playing before the jury.)

8 MR. BLUM: This is the second deposition,  
9 Your Honor.

02:21PM

10 (The video commenced playing before the jury.)

11 MR. BLUM: This has to be rebooted, Your Honor.  
12 Your Honor, while we have a break, the deposition Exhibit 235  
13 is actually Exhibit 1378 in this case.

14 THE CLERK: 13 what?

02:21PM

15 MR. BLUM: Exhibit 235 referred to in the  
16 deposition is Exhibit 1378 which is in evidence.

17 THE COURT: All right.

18 (The video commenced playing before the jury.)

19 THE COURT: Does that conclude the testimony?

02:26PM

20 MR. BLUM: Yes, Your Honor.

21 THE COURT: Does the defense have any further  
22 witnesses or evidence?

23 MR. BLUM: Subject to moving some exhibits into  
24 evidence, we would rest.

02:27PM

25 THE COURT: All right. Is there any rebuttal



1 evidence?

2 MR. RICHARD: Yes, Your Honor. We would call  
3 Gaynor Dawson who was a representative 30(b)(6) witness for  
4 Whittaker. We would call him via video deposition.

02:27PM 5 THE COURT: And there is an objection on this?

6 MR. BLUM: Yes, Your Honor. What we discussed  
7 earlier.

8 THE COURT: I'm fully familiar with this. Let's  
9 do this. This issue we will discuss after I release the jury  
02:27PM 10 because it's almost 2:30.

11 So we are going to break at this point, members  
12 of the jury.

13 Let me tell you where we are. You can expect  
14 that tomorrow the Court is going to provide you with the final  
02:27PM 15 jury instructions in this case, and you will hear closing  
16 arguments tomorrow as well. So there's a reasonably good  
17 chance that you will actually start your deliberations  
18 tomorrow.

19 With that, please remember not to speak to anyone  
02:28PM 20 about the case, the people, or the subject matter involved.  
21 Continue to keep an open mind. The closing arguments are  
22 anticipated to be fairly lengthy, approximately a couple of  
23 hours a piece. So they will take up a good part of tomorrow  
24 along with the instructions, but there still may be time for  
02:28PM 25 you to deliberate.

1           You may recall, although it's been a little while  
2 ago, I mentioned during jury selection that the general time  
3 that you would be sitting would be until 2:30 with certain  
4 exceptions, and one of the exceptions was during deliberations.

02:28PM

5           So tomorrow you should anticipate that you will  
6 be here longer than 2:30. You can anticipate that you will be  
7 here through about 4:30. You will have the ability to do -- to  
8 take breaks and the like, and I will give you more time for a  
9 lunch break tomorrow. It's our intention to actually have a

02:29PM

10 warm lunch ordered in for you tomorrow. So that is what is  
11 anticipated for tomorrow. That is it for this day.

12           So please have a very good evening, and I will  
13 see you tomorrow at 8:30, please.

14           (The following proceedings were held in

02:30PM

15 open court outside the presence of the jury:)

16           THE COURT: We are outside the presence of the  
17 jury.

18           I'm not persuaded, Mr. Richard, after looking at  
19 the materials for Mr. Dawson that this qualifies as rebuttal.

02:30PM

20 It seems to me that this is probably evidence you anticipated  
21 bringing in probably from the beginning of the case but just  
22 doing it through Mr. Dawson who you anticipated being called in  
23 the defense case.

24           This has been an issue, it seems to me,

02:30PM

25 throughout the trial. I read the material. I don't frankly

1 think it favors one side more than the other, but that's for  
2 counsel to make its own determination.

3 But he generally testifies about record-keeping  
4 practices and whether documents were destroyed and things of  
02:31PM 5 that nature. And it seems to me that's really been an issue to  
6 an extent from the opening statements in this case.

7 MR. RICHARD: May I just very briefly?

8 THE COURT: Sure.

9 MR. RICHARD: I'm not sure that's the standard  
02:31PM 10 for rebuttal evidence, but in this case I won't spend much time  
11 on this, Your Honor.

12 We just heard from three witnesses, via  
13 deposition reads, who all talked about documents and policies  
14 as though they existed. One way or the other, they all talk  
02:31PM 15 about the absence of that evidence.

16 I do think that those deposition reads make it  
17 fair rebuttal, raise that issue in the minds of the jury. They  
18 talked about policies that they wrote, that they relied on,  
19 written policies that may or may not have existed.

02:31PM 20 Anyway, I think the evidence is directly relevant  
21 to that.

22 THE COURT: Could you point out anything more  
23 specific because I did not focus on the deponents when I  
24 formulated the thought that I articulated to you. I was  
02:32PM 25 focused on the issue that you presented to the Court was that

1 this rebuts Mr. Hokkanen's testimony which is a little bit hard  
2 to see.

3 MR. RICHARD: Yes, Your Honor. I mean, that --  
4 so we just heard from Mr. Jisa and Mr. Luce and Mr. Simmons,  
02:32PM 5 and they testified about a safety manual that was prepared and  
6 about an environmental manual in response to RCRA in 1980 and  
7 that they had a policy before that time against dumping  
8 anything on the ground.

9 THE COURT: And I may misremember this, but I do  
02:32PM 10 recall there being testimony about this manual or policy. I  
11 even recall, it seemed it was a question of linguistics, but  
12 there was even some impeachment about whether or not there was  
13 a manual in place. And there was a document, a procedural  
14 manual that has been shown and introduced into evidence. There  
02:33PM 15 was reference in that manual, I think, to DOD regulations or  
16 some DOD citations.

17 And so tell me specifically what you think these  
18 witnesses testified to that perhaps is contradicted?

19 MR. RICHARD: Yes, Your Honor. Very  
02:33PM 20 specifically, one of the witnesses testified that they disposed  
21 of it. He referred to manifests. We sent it to specific  
22 sites, and there would have been paperwork associated with  
23 that. So it's not just the manuals. It's the disposal  
24 documentation that the witnesses just testified to that does  
02:33PM 25 not exist, has never been produced.

1           It's difficult to identify a brand new issue for  
2   rebuttal. That's why it's rebuttal. But I do think it fairly  
3   responds to testimony that defendants just presented about  
4   documents that -- regarding disposal practices and that the  
02:34PM 5   documents were signed.

6           THE COURT: All right.

7           MR. RICHARD: That's all I've got.

8           THE COURT: Let me hear from you, Mr. Blum,  
9   because that does put it in a different light than the Court  
02:34PM 10   contemplated.

11           MR. BLUM: Your Honor, it really doesn't. It's  
12   the same issue.

13           THE COURT: You need to go to the lectern,  
14   please.

02:34PM 15           MR. BLUM: Your Honor, I don't think it does.  
16   It's another case of the plaintiffs using a revolving or a  
17   flowing argument.

18           We introduced --

19           THE COURT: Do you really want to make this point  
02:34PM 20   after you are asking the Court for a statute of limitations  
21   issue?

22           MR. BLUM: No, sir.

23           THE COURT: Probably not a really good day for  
24   you to be making that argument.

02:34PM 25           MR. BLUM: Correct. The issue of manual, as the

1 Court dealt with, we introduced two manuals. They're in  
2 evidence. The issue of manifests was dealt with. There was  
3 specific evidence from specific individuals who saw manifests.  
4 There was no doubt the manifest is created.

02:35PM

5 None of these witnesses said -- dealt with  
6 specific documents that Mr. Gaynor says don't exist.

7 THE COURT: So tell me how the evidence is  
8 prejudicial to Whittaker. That's not the only focus, nearly  
9 the only focus that I'm making here. But tell me because I  
10 read it and I'm struggling a little bit to understand what  
11 the -- what the reason is for the objection.

02:35PM

12 MR. BLUM: Well, Your Honor, I don't want to -- I  
13 don't want to say that the plaintiff has misrepresented how  
14 they're going to use it, but I don't think they have been  
15 candid with the Court.

02:35PM

16 What they will do in closing is use this evidence  
17 to say that Whittaker has been lying about what they did.

18 THE COURT: But -- excuse me, Mr. Blum. But  
19 that's one of the reasons why I was also inclined to allow it  
20 which is that it does appear to an extent to provide the jury  
21 with context and actual evidence so that the parties aren't  
22 essentially ignoring what the evidence shows about the record  
23 keeping and retention practices of your client.

02:36PM

24 MR. BLUM: Remember, Your Honor, we tried to get  
25 in evidence with Mr. Hughto that the evidence did exist at the

02:36PM

1 time of the first trial, that there were more contracts there,  
2 that there were manifests that they saw but that a lot of these  
3 had been subsequently destroyed, and you wouldn't let us get  
4 into that because you said it wasn't relevant.

02:37PM

5 The evidence is that that stuff did exist a  
6 couple decades ago. It has nothing to do with us about why  
7 it's not there.

8 THE COURT: What happened to it?

02:37PM

9 MR. BLUM: Part of it -- part of it was -- it's  
10 been put -- it's gone all over the world. Part of it was  
11 seized by DTSC. Part of it was seized by L.A. County. Part of  
12 it was used in litigation. And part of it has just been the  
13 subject of time. We're not -- we're dealing with something  
14 that happened 40 years ago with a site that has been closed.

02:37PM

15 To say that just because it doesn't exist there's some  
16 nefarious motive to it is not substantiated.

17 THE COURT: So what is it that you're going to  
18 tell the jury tomorrow in response?

19 MR. BLUM: To what --

02:37PM

20 THE COURT: You've heard the opening statement.  
21 You've heard the examination. So there's going to be an issue  
22 presumably tomorrow about the lack of records and  
23 documentation.

02:38PM

24 MR. BLUM: What I will do is I will point to some  
25 of the exhibits for -- specifically I believe it was an audit

1 by DTSC in the late '80s where they reviewed the documents,  
2 where they said they exist. They reviewed plans for -- there  
3 were closure plans. There were manifests. There were -- they  
4 eventually got the training records. There's stuff that says  
5 they got them.

02:38PM

6 THE COURT: All right. You've convinced me that  
7 I'm going to allow it in because what I hear the parties saying  
8 essentially is you're going to be arguing about this stuff.

9 You just don't want the jury to hear what is relevant to the --

02:38PM

10 their consideration. And you have, it sounds to me, a  
11 response. Your response is the documents did once exist as  
12 reflected by the fact that regulators or others previously  
13 relied upon them.

14 MR. BLUM: Your Honor, I wasn't going to -- you  
15 asked me what was I going to do if they were allowed to read  
16 it, to read that stuff in. If they weren't going to read it  
17 in, I wasn't going to get into that.

02:38PM

18 THE COURT: And, Mr. Richard, are you going to be  
19 getting into documents or lack of documentation?

02:39PM

20 MR. RICHARD: Absolutely, Your Honor. I can go  
21 into it further. One thing comes to mind right now that  
22 Mr. Blum asked Mr. Hughto, and that manifest just wasn't signed  
23 by the people that were supposed to sign it. And yet we have  
24 in evidence a notice of violation. That wasn't the violation.

02:39PM

25 The violation was the manifest didn't even have the right --



1 the name of anyone on it, and then they're cited for not having  
2 records.

3 So yes, Your Honor, this is an issue. I'm not  
4 going to harp on it, but it's a relevant issue in every case.  
02:39PM 5 Where is the evidence?

6 THE COURT: All right. For what it's worth, I  
7 think the parties are making much more of this entire issue  
8 than probably is of much interest. But I am concerned that  
9 there's going to be discussion in closing argument about it  
02:40PM 10 that even potentially may run afoul of what's actually stated  
11 in the 30(b)(6) deposition of Mr. Dawson that is going to raise  
12 even potentially some ethical issues. And I'm not suggesting  
13 that any party would intentionally run afoul of ethical issues  
14 by testifying to something or stating something in closing  
02:40PM 15 argument that they know not to be factual based upon  
16 Mr. Dawson's testimony.

17 I am going to allow it, not because it's rebuttal  
18 for Mr. Hokkanen, but I do think that -- it's marginal, but I  
19 do think it is rebuttal with respect to what the jury heard  
02:40PM 20 concerning the existence of the documents and policies and  
21 practices. That is the Court's ruling.

22 Let's turn to the jury instructions. I do want  
23 to start with the statute of limitations. I realize that was  
24 just presented at least in writing today, Mr. Richard, although  
02:41PM 25 we did get a preview that this might be coming from Mr. Blum

1 and he apparently decided to file it.

2 MR. RICHARD: Yes, Your Honor. So at  
3 10:00 o'clock this morning with -- I had no advance notice that  
4 this was going to be filed today -- 75 pages of materials were  
02:41PM 5 submitted to the Court. I believe I was examining Mr. Simpson  
6 at that time or shortly thereafter. So I have not looked at  
7 those 75 pages. I have looked at enough to know this relates  
8 back to a conversation I had in August at one of our meet and  
9 confer calls on a Saturday or Sunday where Mr. Blum said --

02:41PM 10 THE COURT: Slow it down, please.

11 MR. RICHARD: I can just move to conform to  
12 proof. And I said, no, sir. There will be prejudice. Under  
13 Rule 15 it's not you may just willy-nilly wait and then spring  
14 something on me. And so then we didn't hear anything further.  
02:42PM 15 And now we get this motion which on its face is absolutely  
16 defective because the testimony of Mr. Masnada that he heard in  
17 one of these meetings that there was contamination at the  
18 Whittaker site doesn't start the statute of limitations running  
19 on any claim. There was no harm to the water agency. So that  
02:42PM 20 should be a full stop.

21 Beyond that, Rule 15 is very clear that where  
22 there is prejudice and no consent -- and I absolutely did not  
23 consent to this -- and I was very clear because I have been  
24 down this road before on a Rule 15 -- there was no consent.  
02:42PM 25 There is prejudice that I would have to call clients now and

1 actually read the 75 pages they filed and then present a  
2 witness to say, no, we didn't have harm. This wasn't accrued.  
3 This wasn't a claim. There's equitable tolling. There's a  
4 whole host of issues that do not permit a litigant aware of  
02:43PM 5 this evidence and this testimony to try to back door in this  
6 fashion.

7 I'm happy to address the issue further once I  
8 have read the papers, but I think this is a nonstarter from  
9 beginning to end.

02:43PM 10 THE COURT: Give me some sense as to the  
11 testimony that you would look to elicit with regard to delayed  
12 discovery.

13 MR. RICHARD: Sure. We would bring back  
14 Mr. Masnada and say, did you think there was harm to the water  
02:43PM 15 agencies when you said you heard that there might be or was  
16 contamination at the Whittaker site? We would have to call  
17 other executives who were at the company during that same time  
18 period. I would have to dig up documentation and  
19 correspondence as to both with Whittaker and the regulatory  
02:43PM 20 agencies.

21 This is -- so that's off the top of my head,  
22 there are witnesses and documents that we would present to  
23 rebut this notion that they sat on their rights and that there  
24 was any harm that had -- that would have permitted them to file  
02:44PM 25 a claim at that time.

1 THE COURT: All right. Mr. Blum? And before you  
2 respond, let's frame what the issue is.

3 So you're asking the Court to give a statute of  
4 limitation defense of three years which would essentially say  
02:44PM 5 that, if they were on notice, that is, if the water agency was  
6 on notice three years prior to filing their Complaint, that  
7 their claims are time barred; is that correct?

8 MR. BLUM: Yes, sir.

9 THE COURT: And so you would have me basically  
02:45PM 10 say that you contend that the agency's lawsuit was not filed  
11 within the time set by law, and then you have to prove that the  
12 claimed harm occurred before, and this would be before August 8  
13 of 2015; correct?

14 MR. BLUM: Yes, Your Honor. But I need to be  
02:45PM 15 particular. We're only talking about the negligence cause of  
16 action.

17 THE COURT: All right. But with regard to  
18 negligence, you would agree that the claim would be time barred  
19 assuming I were to give this instruction if, in fact, the  
02:45PM 20 agency had notice prior to August 8 of 2015.

21 MR. BLUM: Yes, sir. I don't have the dates  
22 down, but generally, yes.

23 THE COURT: All right. So three years before the  
24 filing of the Complaint, you know the Complaint was filed in  
02:46PM 25 2018. So let's just say 2015 which is close enough for

1 purposes of this discussion.

2 MR. BLUM: Yes, sir. I agree.

3 THE COURT: And you are basing that on testimony  
4 that came out with Mr. Masnada in this trial some eight days  
02:46PM 5 ago relating to him learning about perchlorate contamination;  
6 correct?

7 MR. BLUM: He said just contamination generally.  
8 He wasn't sure what it was.

9 THE COURT: First of all, does your statute of  
02:46PM 10 limitation defense focus exclusively on perchlorate, or does it  
11 extend to VOCs?

12 MR. BLUM: It would extend to both under the  
13 *CASMI IV* case.

14 THE COURT: And are you able to tell this Court  
02:46PM 15 in good faith as a -- as an officer of the court that you had  
16 no evidence that the plaintiff had notice of perchlorate or VOC  
17 contamination prior to August of 2015?

18 MR. BLUM: Your Honor, I can tell you that his  
19 testimony came as a complete surprise to us.

02:47PM 20 THE COURT: That's not my question, is it?

21 MR. BLUM: Your Honor --

22 THE COURT: You would agree with the Court,  
23 Mr. Blum, that, whether Mr. Masnada testified to that or not,  
24 you would have the same statute of limitation defense based  
02:47PM 25 upon other evidence that the water agency was on notice of

1 perchlorate and VOC contamination prior to August of 2015?

2 Correct or not correct?

3 MR. BLUM: Your Honor, can I correct a factual  
4 issue here, though, please?

02:47PM 5 THE COURT: Yes.

6 MR. BLUM: The problem was 2015 I don't think is  
7 the right date. It actually -- because the original settlement  
8 agreement had a tolling provision of VOC claims. So it has to  
9 go back three years prior to that case, not years prior to this  
10 case.

02:48PM 11 THE COURT: So give me the date that you would be  
12 asking which is where I started and you concurred.

13 MR. BLUM: 1997.

14 THE COURT: So are you saying that there -- you  
02:48PM 15 had no evidence that there was notice of perchlorate  
16 contamination prior to 1997 before you heard from Mr. Masnada?

17 MR. BLUM: Your Honor, I can tell you I had lots  
18 of suspicions that they knew -- that they had reason to believe  
19 it was contaminated prior to 1997. But the first piece of  
02:48PM 20 evidence we got was Mr. Masnada's testimony. So did I believe  
21 they knew before? Yes.

22 THE COURT: What was your suspicion based on?

23 MR. BLUM: My gut and the fact I have been doing  
24 this for 30 years. But we tried all different ways to get the  
02:49PM 25 evidence, and everybody said, no, they didn't know, they didn't

1 know until they found the perchlorate. And perchlorate wasn't  
2 the issue because nobody knew about it until '97. So we  
3 weren't going to win that argument.

02:49PM 4 But what Mr. Masnada said, it wasn't just  
5 perchlorate. It was other things. That was the key to us that  
6 it was other things because perchlorate wasn't going to be  
7 enough.

8 THE COURT: Did you depose Mr. Masnada?

9 MR. BLUM: No.

02:49PM 10 THE COURT: Did you conduct discovery on the  
11 issue of the statute of limitations?

12 MR. BLUM: Generally we did, Your Honor, but I  
13 don't know if we asked a specific question. Again, I want to  
14 be real candid with the Court. I don't recall.

02:49PM 15 THE COURT: So maybe you could square that for  
16 me, Mr. Blum. You've been doing this for a long time. You had  
17 a suspicion that they knew prior to 1997, and you didn't -- you  
18 weren't all over this because it's at least game over for the  
19 negligence claim.

02:50PM 20 MR. BLUM: Well, we were. In the depositions we  
21 took of Mr. Stone, of Mr. Alvord, of Mr. Leserman, and a whole  
22 bunch of other depositions, we asked. You saw in the clip that  
23 was played from Meredith Durant we inquired about it. And as  
24 to VOCs, the testimony was, no, we didn't know until we tested  
02:50PM 25 in the wells.

1           So we were all over it. We just didn't have the  
2 evidence. And, frankly, Your Honor, we were -- had a very  
3 limited amount of depositions, and my recollection is the Court  
4 was very clear that it was not going to be inclined to give us  
02:50PM 5 more.

6           THE COURT: But please don't try to make a record  
7 of anticipating what the Court might or might not have done.  
8 You didn't ask the Court to conduct discovery of -- additional  
9 discovery with respect to the statute of limitations. I didn't  
02:50PM 10 limit you with regard to your written discovery.

11           MR. BLUM: We did do discovery. That's what I'm  
12 trying to say. We asked all the witnesses that would have had  
13 information about what their knowledge was and when they got  
14 it. It wasn't something we ignored. We did not get to  
02:51PM 15 Mr. Masnada. And that's -- Your Honor, to be frank, if that's  
16 something we should have done then you should deny the motion.

17           THE COURT: Well, I probably should deny the  
18 motion because you should have done that, and it clearly will  
19 cause prejudice here. The Court would have to essentially  
02:51PM 20 delay this trial, it seems to me, in order to allow the issue  
21 of delayed discovery. There's unquestionably going to be an  
22 issue of delayed discovery here, is there not?

23           MR. BLUM: Yes.

24           THE COURT: And how could I at this point  
02:51PM 25 foreclose the plaintiff practically from introducing evidence



1 on delayed discovery?

2 MR. BLUM: Your Honor, first, I think they have.

3 But to the extent they would want to introduce more --

4 Your Honor, I understand the Court's problem and the Court's

02:52PM

5 issues here. But this truly was new evidence for us. And

6 given the evidence there and what we believe at this point is a

7 very strong case that they blew the statute of limitations --

8 THE COURT: Well, you can't even say that or

9 represent that to the Court in good faith, can you, without

02:52PM

10 even knowing or having more discovery on delayed discovery? I

11 can't make that determination.

12 MR. BLUM: Your Honor, I can because we actually

13 deposed these people on this issue. And nobody -- and we know

14 what they're going to say. Our problem was we couldn't get the

02:52PM

15 knowledge back early enough. So we did the discovery on

16 statute of limitations. So the discovery is done. So I can

17 say that I know what at least the witnesses that were directly

18 involved would say because we have done the discovery.

19 THE COURT: All right. Submitted?

02:52PM

20 MR. BLUM: Yes, sir.

21 THE COURT: All right. The Court is not going to

22 allow the statute of limitations. I have considered the

23 Feldman factors, and I may elaborate further.

24 I, first of all, find that there would be

02:53PM

25 substantial prejudice to the plaintiff to allow the statute of

1 limitations defense at this late date. There's no question in  
2 my mind that, with a modest amount of discovery by capable  
3 counsel on the defense side, that this issue would have been  
4 properly discovered during discovery, not that it should be  
5 learned during trial.

02:53PM

6 And there's a history on this issue which is a  
7 history of going up and down, asserting a statute of  
8 limitations defense, there being a motion, the Court granting  
9 it because there is no factual support for the statute of  
10 limitations defense but the Court being very clear that I would  
11 be open to allowing the affirmative defense if presented with  
12 facts on a timely basis, and then hearing from Whittaker that  
13 they don't intend to pursue the statute of limitations defense  
14 only to trot it out at -- to say the 11th hour is an  
15 understatement.

02:54PM

16 They even learned about this evidence eight days  
17 ago, and while I understand that there are four intervening  
18 days including a weekend and two holiday days, I also  
19 understand that, just like the parties, the Court has been  
20 working substantially throughout this period.

02:54PM

21 And the submission that I received today, at  
22 least the thrust of the submission, could not have taken very  
23 long to present to the Court and to provide it notice so this  
24 issue could have been even discussed before the close  
25 essentially of all of the evidence in the case.

02:55PM

1 Reluctantly I find that this issue has not been  
2 presented in good faith to the Court. I do think there has  
3 been bad faith on the part of Whittaker and the way that it has  
4 presented this issue, and I find substantial prejudice to  
02:55PM 5 introduce it at this late hour.

6 So for all those reasons, the Court is precluding  
7 the statute of limitations defense.

8 We do have other issues that we need to turn to.  
9 I do want to start with the successor liability. One moment,  
02:55PM 10 please.

11 Okay. Let's turn to successor liability. I have  
12 received the parties' dueling instructions on this although I  
13 actually don't think you're that far apart. Let me provide  
14 what the Court would suggest.

02:56PM 15 The first sentence apparently is not disputed on  
16 successor liability, and that is "Whittaker is the successor to  
17 the Bermite Powder Company, and Bermite occupied the site from  
18 1943 until Whittaker purchased it in 1967."

19 The sentence that I would include is I think  
02:57PM 20 closer to what Whittaker is proposing, and it seems preferable  
21 in my view because it is more direct to the issue. And it  
22 says -- this is what I'm proposing. "Whittaker is, therefore,  
23 libel for any act or omission by Bermite that resulted in  
24 negligence, nuisance, or trespass." I will read it again.

02:57PM 25 "Whittaker is, therefore, libel for any act or omission by

1 Bermite that resulted in negligence, nuisance, or trespass."

2 The only thing it leaves out on your side is I  
3 don't introduce, again, the idea of the burden of proof, but  
4 there will be a general burden of proof instruction that I will  
02:58PM 5 give once again. And, of course, Mr. Richard would be  
6 precluded -- and I can't imagine he would suggest in his  
7 closing argument that anyone other than the water agency has  
8 the burden of proof on this. And you would be able, if you  
9 thought it significant, Mr. Blum, to remind the jury that it is  
02:58PM 10 the plaintiff that has the burden of proof.

11 I just don't see, necessarily, the need to have  
12 the burden of proof introduced every time there's a claim or an  
13 issue when I have a general burden of proof instruction.

14 So let me hear, since you're rising first,

02:58PM 15 Mr. Blum. I will hear from you, and then I will hear from  
16 Mr. Richard.

17 MR. BLUM: Your Honor, we find the instruction as  
18 you have done acceptable. The only thing I would add is we  
19 have made a motion in the JMOL that might affect this because  
02:59PM 20 we do not believe there has been any evidence that during the  
21 Bermite time there's been any negligence.

22 THE COURT: I understand.

23 MR. BLUM: Thank you, Your Honor.

24 THE COURT: Any objection, Mr. Richard?

02:59PM 25 MR. RICHARD: No, Your Honor.

1 THE COURT: All right. Then --

2 MR. RICHARD: Just a question on timing. At some  
3 point, now that defendants have rested, I also had a motion. I  
4 can make it orally on their cross-complaint. I think there's  
02:59PM 5 one or two claims that would otherwise potentially go to the  
6 jury, and I just didn't want that hanging out there. Whenever  
7 it is convenient to the Court.

8 THE COURT: Let us see if we can make some  
9 progress on the jury instructions since I have to do two  
02:59PM 10 things, and I know you have things to do as well. One is I  
11 have to get you and I intend to get you, if possible, a copy of  
12 the instructions this evening so that you have them for your  
13 closing argument. But I also have two documents that I have to  
14 prepare, and that includes a Word document as well as a  
03:00PM 15 PowerPoint. So I'd like to try to get through as much as I can  
16 to satisfy those objectives.

17 So now I'm going to skip over negligence, per se,  
18 for a moment, and go to the next item that the parties have  
19 identified as remaining unresolved, and I'm going from the list  
03:00PM 20 that the parties provided the Court by e-mail a night or two  
21 ago. And the next is apportionment of responsibility.

22 And I will want to hear from you, Mr. Blum, on  
23 this issue, but let me at least give you a sense of what I  
24 think I heard, after we previously discussed this, is that I  
03:00PM 25 heard from your expert, Mr. Hokkanen, words to the effect that

1 he cannot identify other sources. And let me tell you how I  
2 reach that conclusion. He said that, in order for him to be  
3 able to identify other sources, he essentially would have to go  
4 and do an investigation to see who used what products and  
03:01PM 5 released what products or chemicals into the ground, and he  
6 didn't do that.

7 And so my recollection is that you had referred  
8 to Mr. Hokkanen as the sponsor of the evidence that would  
9 demonstrate that there were other tortfeasors beyond SIC. SIC  
03:01PM 10 is going to be presented. So I intend to present the  
11 apportionment of responsibility instruction, and I intend to  
12 include the SIC. What I'm really focused on is whether there's  
13 anyone else, and I have not heard evidence that would be  
14 sufficient to present it to the jury.

03:02PM 15 MR. BLUM: Your Honor, I think there's a nuance  
16 to what Mr. Hokkanen said that is different from the way the  
17 Court characterized it. What Mr. -- and, by the way, the only  
18 other apportionment issue, the only other, quote, "party" or  
19 entity that we would want to add would be those parties that  
03:02PM 20 were responsible for the contamination around the mall wells.  
21 That might not be the right wording, but I think the Court  
22 understands the concept.

23 What Mr. Hokkanen says is he has no doubt it's a  
24 third party which is consistent with what Dr. Trudell  
03:02PM 25 originally testified to but then changed his mind. But as to

1 who -- in order to identify those parties, he would have to do  
2 the investigation that the Court said.

3 For an apportionment instruction, you don't have  
4 to be able to name the party. You could -- if you could  
03:03PM 5 specifically define the area or -- such as suppliers of  
6 asbestos too, that's sufficient for an apportionment. And I  
7 think we have done that. We have done -- there's a lot of  
8 evidence relating to the fact that there are -- that the mall  
9 wells, the contamination there is from -- is not from Whittaker  
03:03PM 10 and there is significant evidence that that -- excuse me --  
11 that the contamination there has been drawn into Well V-201.  
12 We just had more of that evidence from Meredith Durant.

13 THE COURT: All right. Just a moment. We're  
14 going to take just a couple minute break to change out the  
03:04PM 15 court reporters.

16 (A recess was taken at 3:04 p.m.)  
17  
18  
19  
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25

CERTIFICATE OF OFFICIAL REPORTER

I, MIRANDA ALGORRI, FEDERAL OFFICIAL REALTIME  
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THE CENTRAL DISTRICT OF CALIFORNIA, DO HEREBY CERTIFY THAT  
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STENOGRAPHICALLY REPORTED PROCEEDINGS HELD IN THE  
ABOVE-ENTITLED MATTER AND THAT THE TRANSCRIPT PAGE FORMAT IS IN  
CONFORMANCE WITH THE REGULATIONS OF THE JUDICIAL CONFERENCE OF  
THE UNITED STATES.

DATED THIS 1ST DAY OF DECEMBER, 2021.

/S/ MIRANDA ALGORRI

MIRANDA ALGORRI, CSR NO. 12743, CRR  
FEDERAL OFFICIAL COURT REPORTER



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